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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1944

No. 160

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY,
a Corporation,
Petitioner,

vs.

G. W. BURLEY, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Reply Brief for Petitioner.

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SUBJECT INDEX.

	PAGE
Summary of Argument	1-3
Argument	4-14
A. The award of the Adjustment Board of September 6, 1940 denied the claim of the Brotherhood for additional pay at time and one-half from August 27, 1934 until November 14, 1938. That award is final and binding upon the respondents	4-10
B. No question is presented arising under the due process clause of the Fifth Amendment to the Federal Constitution	10-13
Conclusion	14

TABLE OF CASES CITED.

Baltimore and Ohio Railroad Co., et al. v. Brady, 288 U. S. 448, 457	9
Corrigan, et al. v. Buckley, 271 U. S. 223	9, 13
Griffin v. Chicago Union Station, 13 F. Supp. 722	8
Hardware Dealers Mutual Fire Insurance Company v. Glidden Co., 284 U. S. 151	13
I. C. C. v. United States, 289 U. S. 385, 394	9
L. & N. R. Co. v. Greene, 244 U. S. 522	13
Luckenbach S. S. Co. v. United States, 272 U. S. 533	13
Moore v. Illinois Central Railroad Co., 312 U. S. 630	9, 13
National Labor Relations Board v. Jones and Laughlin Steel Corporation, 301 U. S. 1, 46	13
Nord v. Griffin, 86 F. 2d 481	8

PAGE

TABLE OF CASES CITED (Continued).

Plymouth Coal Company v. Pennsylvania, 232 U. S. 531, 547 13

Reetz v. Michigan, 188 U. S. 505 13

System Federation v. Louisiana and A. Railway Co., 32 F. Supp. 89, 90 16

Teague v. Brotherhood of Locomotive Firemen, 127 F. 2d 58 13

United States v. Heinze, 218 U. S. 532 13

Virginian Railway Co. v. System Federation, No. 40, 300 U. S. 515, 558, 559 ..... 13, 14

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SUMMARY OF ARGUMENT.

The Railway Labor Act imposes upon the parties a new terminology and new concepts. It compels the performance of new duties. It creates rights and privileges for employees and their designated representatives. It blocks out the nomenclature of the common law.

The authority of designated representatives to act is not specifically delegated by respondents. That authority springs from the Railway Labor Act. In like manner, that authority cannot be limited by lack of specific directions from respondents or by rules and by-laws of the Brotherhood, to which the respondents belong.

Designated representatives of the employees have power to change labor agreements. The Act so provides. Designated representatives also have power by the Act "to settle all disputes" and "with all expedition". Designated representatives have power by the Act, also, to compromise grievances, as was done in the case at bar in the execution of the compromise agreement of October 31, 1938.

Collective bargaining compromise agreements are not required to meet the technical requirements of consideration necessary for contracts of common law. The only requisite is that such agreements express the intention of the parties. This was done by the compromise agreement of October 31, 1938. The Adjustment Board so found in its award.

There is no dispute in the case at bar that the parties who executed this agreement were the designated representatives nor is there any dispute that the designated representative who filed the claim before the Adjustment Board was the proper representative to file such a claim. The Railway Labor Act gave this representative power to "refer" the claim to the Board, if he so elected. The fact that the claims may affect the "personal" or "individual" rights of the respondents does not destroy the final and binding effect of the award of the Board.

The final and binding provision in the Act, paragraph (m), should be construed to read that non-money awards of the Board shall be final and binding upon both parties to the dispute except insofar as the Act otherwise provides and except insofar as the constitution prohibits. The

respondents are forced to take the position that if there is an award of the Board against the employees or their designated representative, the employees can "disregard" the award because "it is of no effect whatsoever." This construction opposes the clear expression by Congress that awards shall be final and binding. The Senate and House reports at the time of the adoption of the 1934 amendments refer not only to a "compulsory" system of "adjudication" but also to the requirement that the Board shall "hear and decide" the disputes.

Paragraph (m) does not deny respondents due process of law required by the Fifth Amendment. Respondents and the designated representatives have the right to file a suit at law for damages and there obtain due process. If the designated representative elects to file a claim before the Board, the respondents are bound thereby and cannot (after the award of the Board issues against them) claim that the election of their designated representative deprives them of due process.

The argument that the respondent would have "a right of review" by courts if the award of the Board was in favor of the employees ignores the provision in paragraph (p) that enforcement proceedings in the District Court by petition are permissive only. The employees *may* file the petition but are not required by paragraph (p) to file it. The Fifth Amendment is a limitation upon the powers of the Federal Government. It is not directed against the election made by a designated representative not to have court adjudication of claims of the respondents. Therefore, the lack of due process argument does not apply.

ARGUMENT.

A.

The award of the Adjustment Board of September 6, 1940, denied the claim of the Brotherhood for additional pay at time and one-half from August 27, 1934 until November 14, 1938. That award is final and binding upon the respondents.

Throughout the brief for respondents there occur frequently the terms "release", "*res judicata*", Brotherhood as "agents" of the respondents, Brotherhood officials acting within scope of "authority," "valid consideration," "no consideration," and "meeting of the minds". This nomenclature of the common law is blocked out by the Railway Labor Act. The Act imposes on the parties a new terminology and new concepts. It compels the performance of new duties. It creates new rights and privileges for employees and their designated representatives.

The authority of the designated representatives to act is not specifically delegated by respondents. That authority springs from the Railway Labor Act. In like manner, that authority cannot be limited by lack of specific directions from respondents or by rules and by-laws of the Brotherhood, to which the respondents belong.

To permit such a limitation would destroy the powers granted to the designated representatives by Congress. The rules and by-laws of the Brotherhood can no more limit the compulsory requirements of the Act (Petitioner's brief, p. 24) than could by-laws or resolutions of the Board of Directors of the petitioner limit them. The mandatory provisions of the Act are supreme.

Respondents argue (brief, p. 14):

> "We submit that no rights of the members can be alienated without the member's consent, as the 'Board' and the lower Court did in the instant case."

Again (brief, p. 16) respondents argue:

> "Certainly, the right to damages is as valuable as a seniority right, and we believe the court should not fail to follow these decisions in holding that a union, nor its officials, cannot waive or destroy it."

The Act itself (45 USCA 152, Seventh) provides for changes in rates of pay, rules or working conditions as follows:

> "Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreement or in section 156 of this title."

Another provision of the Act (45 USCA 156 provides:

> "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

When changes in the labor agreement are made in accordance with these provisions, personal rights of members of the union may be "alienated" or destroyed without their "consent". As stated in *System Federation* v. *Louisiana and A. Railway Co.*, 32 F. Supp. 89, 90 (affirmed 119 F. 2d 509):

> "This was collective bargaining and the various plaintiffs herein were bound. It follows from the plain reading that any and all claims for *damages* for a violation of seniority rights are foregone and cancelled, certainly as far back as February 9, 1931." (Italics ours.)

Designated representatives of the employees have power to change the labor agreement. The Act so provides. Designated representatives also have power to compromise grievances. That power to make the compromise agreement of October 31, 1938, effective is derived from the provisions of the Act authorizing representatives "to settle all disputes" and "with all expedition."

Collective bargaining compromise agreements do not need to meet the technical requirements of consideration required by contracts of common law, as respondents argue (brief, p. 17-19). The only requisite is that the agreements express the intention of the parties to settle grievances. That was done in the compromise agreement of October 31, 1938. The Adjustment Board so found in its award:

Respondents argue (brief, p. 23) that the Board has no jurisdiction of their "individual" claims because there was no "authority" in C. H. Williams, Chairman of the Grievance Committee, to present the same to the Board. There is no dispute that C. H. Williams, as Chairman of the General Grievance Committee, was the designated representative of the respondents. He alone is the official of the Brotherhood authorized to file claims before the Adjustment Board. The first claim filed before the Board

relating to the alleged violation of Article 6 was filed by C. H. Williams as "General Chairman—BRT—EJ&E System" (R. 14). It is admitted by all respondents (brief, p. 25) that this claim was properly filed. The second claim for the alleged violation of Article 6 was filed by C. H. Williams as the designated representative of the respondents and as "General Chairman, B. of R. T., E.J.&E. System" (R. 72). This claim was filed in accordance with the provisions of Section 153 (i) of the Act (45 USCA) which in part provides that ". . . failing to reach adjustment . . ., the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with the full statement of the facts and all supporting data bearing upon the disputes."

Respondents argue (brief, p. 25) that designated representatives do not have authority under the Act or under the constitution and by-laws of the Brotherhood to file before the Board "claims for pay or claims for breach of contract." Respondents admit, however, (brief, p. 24) that the designated representatives do have authority to file before the Board claims relating to "rates of pay, rules or working conditions."

The claim filed before the Board by the designated representative in the case at bar related to rates of pay, rules and working condtions. The labor agreement or "schedule" signed by the Brotherhood and the petitioner in this case (Exhibit "H") is entitled "Rules and Rates of Pay for Yardmen." Respondents in their complaint predicated liability of the petitioner in accordance with Article 6 of that agreement.

The dispute "referred" to the Board in the case at bar was a dispute concerning "rates of pay, rules, and working conditions." The Act gave the designated representative the power to "refer" this claim before the Board, if he so elected. The fact that such a claim may

affect the "personal" or "individual" rights of the respondents is immaterial. Congress intended that disputes concerning these rights may be referred by the designated representative to the Board for adjudication. If specific authority of the designated representative is necessary from each employee relating to matters affecting the "personal" or "individual" rights of each employee, designated representatives will be stymied in carrying out their statutory duties. Furthermore, if such specific authority is necessary, one of the main objects of the Act "to settle all disputes" and "with all expedition" will be frustrated, contrary to the policy of Congress.

Respondents in their brief (pp. 24, 26) refer to *Griffin* v. *Chicago Union Station*, 13 F. Supp. 722, and *Nord* v. *Griffin*, 86 F. 2d 481, certiorari denied, 300 U. S. 673, for the purpose of showing that if the designated representatives do not have specific authority from the particular employee, the award of the Board is void and, also, that if the particular employee affected does not have actual notice of the hearing before the Board, that employee is denied due process of law guaranteed by the Fifth Amendment.

It is admitted that cases similar to *Griffin* v. *Chicago Union Station* and *Nord* v. *Griffin* are exceptions to paragraph (m) that non-money awards of the Board shall be final and binding. In other words, paragraph (m) should be construed to read that non-money awards of the Board shall be final and binding on both parties to the dispute, except insofar as the Act otherwise provides and except insofar as the constitution prohibits.

It is important to note also that in these cases (*Griffin* v. *Chicago Union Station and Nord* v. *Griffin*) the designated representatives before the Board took a position which was *adverse* to some employees. That relation does not apply to the facts in the case at bar. The designated

representative before the Board was a *proponent* of the claims for the respondents, the same which are asserted in the complaint now before this Court.

There is no requirement in the Act that notice shall be given to each particular employee who may be affected by the award when a claim is filed in his behalf by the designated representative. The designated representative had power by the Act itself to "refer" the claims of the respondents to the Adjustment Board for adjudication. The designated representatives of the respondents also had the right before their claims were referred to the Board for adjudication to file suit at law for damages. *Moore* v. *Illinois Central Railroad Co.*, 312 U. S. 630.

Nevertheless, once the case is referred to the Board by the designated representative and the Board has decided it and denied the claim of respondents, respondents later cannot assert the same claim in court. The policy of the Act that non-money awards of the Board are final and binding deprives courts of power, directly or indirectly, to pass upon the same claims adjudicated by the Board, except in the special cases for which provision is made in paragraph (p) of the Act, which provides the exclusive remedy for court review. *Cf. Baltimore and Ohio R. Co., et al.* v. *Brady*, 288 U. S. 448, 457; *I. C. C.* v. *United States*, 289 U. S. 385, 394.

When the designated representative files a claim before the Board, the action on the labor agreement at law which therefore existed is merged in the award. If this result does not follow, every time the claim filed before the Board by the designated representative is denied, the temptation will be great for each employee involved to assert that the designated representative did not have specific authority to file the claim and that, therefore, the employee should have another day in court by filing a suit at law for damages. This reasoning would destroy the policy of Congress to make non-money awards final and binding, ex-

cept as provided in paragraph (p), and would result in the intended adjudication of the Board being a mere ritual with no legal significance.

B.

No question is presented arising under the due process clause of the Fifth Amendment to the Federal Constitution.

On page 27 of the brief for the respondents there is presented the argument that

> "Certainly, the award asked for by Williams was a money award, and though it was not awarded, it 'contained' a money award."

This construction does violence to the language of paragraph (m). Paragraph (m) cannot reasonably be construed to mean that the awards of the Board shall be final and binding upon both parties to the dispute except insofar as the claims filed by the designated representative sought to obtain a money award.

Apparently, counsel for the respondents themselves are not impressed with the argument because on page 31 they argue

> "If there is an award against the employee by the Adjustment Board, he can, for all practical purposes, disregard the same because it is of no effect whatsoever as far as he is concerned."

This conclusion is necessary for the respondents to maintain this suit. It disregards the provisions of the Act clearly expressed by Congress. There was no intention at the time of the passage of the 1934 amendments to the Railway Labor Act that awards by the Board denying claims of the employees might be "disregarded" and be considered of "no effect whatsoever." The policy declared by Congress was quite the contrary.

The Senate report on the 1934 amendments (Report No. 1065, 73rd Congress, 2nd Sess., Page 1 *et seq.*) in part stated:

> "Congress passed the Railway Labor Act with the joint approval of both the representatives of the railroads and the railway labor organizations. They believed it would enable them to settle their differences without the element of compulsion. . . .
>
> "One of the principal weaknesses of the law in practice has been that regional boards have not been set up in some sections of the country for settlement of the disputes in some of the crafts. Both representatives of the carriers and of the employees agree that the setting up of boards for the settlement of disputes should be made compulsory, when necessary. Representatives of the carriers proposed that the setting up of regional boards be made compulsory; representatives of most of the employees insisted that the setting up of the National Board of Adjustment with four divisions be made compulsory. . . .
>
> "The ideal situation would be to have disputes and grievances settled by the men and management on the several properties without any recourse to adjudication by an outside tribunal. Some of those advocating this legislation believe the fact that there is a compulsory board to which grievances may be taken will greatly increase the settlement of disputes by voluntary adjustment boards between the employees and the railroads."

Furtherfore, the report on the 1934 amendments by the House of Representatives (Report No. 1944, 73rd Congress, 2nd Sess.) in part stated:

> "This bill, therefore, provides for the establishment of a National Board of Adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties. . . .
>
> "Division 1 is given authority to hear and decide the disputes involving train, engine, and yard service employees, such as engineers, firemen, conductors, trainmen and switchmen. . . .

> "The committee is confident that this bill strengthens the Railway Labor Act where it is necessary to do so, and feels sure that if the Act is amended as proposed in this bill it will provide effective and adequate machinery to adjust controversies between the carrier, managements and employees. It will assure employees the right to bargain collectively and will contribute immeasurably to the establishment and maintenance of industrial peace."

The respondents argue (brief, p. 29) that paragraph (m) violates the due process clause of the Fifth Amendment because

> "when an award is entered against the employer and he refuses to comply therewith, it is necessary for the employee to file a suit at law, which is a trial *de novo.*"

The respondents concluded (p. 29) that

> "This situation affords the employer a right of review of the decision of the 'Board,' and refuses the same right of review to the employee."

This argument ignores the well settled policies of Brotherhoods not to seek court review when the award of the Board is in favor of the employee. In practice, the Brotherhoods rely upon their economic force. The argument that such an award is "absolutely meaningless" (respondents' brief, p. 32) is unrealistic. Generally, Brotherhoods do not find it "necessary" to file a suit at law to enforce awards of the Board in favor of employees. Consequently, carriers seldom are given a "right of review".

Furthermore, "a right of review" is not granted to the carrier by paragraph (p) of the Act when the award is in favor of the employee. Paragraph (p) is permissive only. It provides that if the carrier does not comply with the order of the Board, the petitioner or any person for

whose benefit such order was made *may* file in the District Court a petition setting forth the causes for which he claims relief.

Finally, if the designated representative elects to file a claim before the Board rather than before a court (*Moore* v. *Illinois Central Railroad Co.*, 312 U. S. 630), neither the designated representative nor the employees may complain about the want of due process if the award of the Board is adverse. Due process of law by court adjudication is always available to designated representatives or employees before they elect to file a claim before the Adjustment Board. The same considerations apply to a carrier before any claim is filed before the Board by designated representatives or by the employees. In these circumstances, the lack of due process argument does not apply.

The Fifth Amendment is a limitation upon the powers of the Federal Government. It is not directed against an election by designated representatives to avoid court adjudication. (*Corrigan, et al.* v. *Buckley*, 271 U. S. 223; *Teague* v. *Brotherhood of Locomotive Firemen*, 127 F. 2d 53.)

Court review is not a necessary supplement to due process of law in the Fourteenth Amendment. (*Reetz* v. *Michigan*, 188 U. S. 505; *Plymouth Coal Company* v. *Pennsylvania*, 232 U. S. 531, 547; *L. & N. R. Co.* v. *Greene*, 224 U. S. 522; *Hardware Dealers Mutual Fire Insurance Company* v. *Glidden Co.*, 284 U. S. 151.) Neither is court review necessary to due process of law in the Fifth Amendment. (*United States* v. *Heinze*, 218 U. S. 532; *Luckenbach S. S. Co.* v. *United States*, 272 U. S. 533; *National Labor Relations Board* v. *Jones and Laughlin Steel Corporation*, 301 U. S. 1, 46; *Virginian Railway Co.* v. *System Federation, No. 40*, 300 U. S. 515, 558.)

CONCLUSION.

When the petitioner made the compromise agreement of October 31, 1938, with the designated representatives of the respondents, the petitioner was not required to look behind the authority conferred by the Railway Labor Act upon the designated representatives to make the settlement. Specific authority of each respondent or of the local lodge to which the respondents may belong is not required by the Railway Labor Act. The respondents are bound by the collective bargaining compromise agreement of October 31, 1938. This Court should so decide and reverse the judgment of the Circuit Court of Appeals.

The award of the Adjustment Board finding that the compromise agreement disposed of all claims of the respondents against the petitioner should be held final and binding upon the respondents and a bar to this proceeding.

It "seems plain that the command of the statute to negotiate for the settlement of labor disputes, given in the appropriate exercise of the commerce power, cannot be said to be so arbitrary or unreasonable as to infringe due process." (*Virginian Railway Co.* v. *System Federation, No. 40*, 300 U. S. 515, 559.)

If the award against the employee may be "disregarded" and considered "of no effect whatsoever," as respondents contend in their brief (p. 31), the statutory scheme of settlement of railroad disputes devised by Congress will have no legal consequences. The result intended by Congress should be effectuated by this Court. That result can be obtained only by reversing the judgment of the Circuit Court of Appeals and affirming judgment for your petitioner entered by the District Court.

Respectfully submitted,

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